

DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

Clause wise Discussion on the Draft Constitution

30th July 1949 to 16th September 1949

SECTION SIX

Clausewise Discussion

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ARTICLE 283

Mr. President: Then we come to article 283. Dr. Ambedkar.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That for amendment No. 3037 of the List of Amendments (Volume II), the following he substituted :—

" That for article 283 the following article be substituted:— (Transitional Provision)

283. Until other provisions is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an All-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution '."

This is a purely transitional provision.

[The motion was adopted. Article 283 was added to the Constitution.]

ARTICLE 302

Mr. President: Then we take up article 302. Dr. Ambedkar.

The Honorable Dr. B. R. Ambedkar: I move :

" That in clause (1) of article 302, after the words ' Governor ' the words ' or Ruler ' be inserted."

" That in the second proviso to clause (1) of article 302, for the words and figures ' bring against the Government of India or the Government of a State such proceed-- ings as are mentioned in Chapter III of Part X of this Constitution ' the words ' bring appropriate proceedings against the Government of India or the Government of a State ' be substituted."

" That in clause (2) of article 302, after the word ' Governor ' the word ' Ruler ' be inserted."

" That in clause (3) of article 302, after the word ' Governor ' the words ' or Ruler ' be inserted."

" That in clause (4) of article 302—

(a) after the word ' Governor ' in the first place where it occurs, the words ' or Ruler ' be inserted;

(b) for the word ' Governor ' in the second place where it occurs, the words ' as Governor or Ruler ' be substituted; and

(c) after the word ' Governor ' in the third place where it occurs, the words ' or the Ruler ' be inserted."

An Honorable Member : What about 13, Sir?

Mr. President: It is not in the Order paper. It is held over.

The Honorable Dr. B. R. Ambedkar: Amendments 14,16,17 and 18 are purely drafting amendments. The only amendment perhaps which requires an explanation is No. 15. The reason for bringing in this amendment is that reference to Chapter III really means reference to article 274. Article 274 deals with the right of suit against Government and that article is divided into two parts. One part deals with the right of suit as exists on the date of the commencement of the Constitution. The other part is regarding the power of Parliament to make further provision with regard to the right of suit against Government. If the words as there remain, it would only mean that the right of suit against Government would be in terms of 274 as it would be on the date of commencement of the Act. The substitution of the words " appropriate proceedings " is intended to cover not only the right of suit as it would exist on the date of commencement of the Act, but also as to subsequent proceedings which Parliament may by law provide against the Government of the day. That

is the reason for this amendment.

I might also mention to the House that I find that if this amendment is carried, I shall also have to bring in a small consequential amendment in article 202 where there has been a sort of omission.

Mr. President: Dr. Ambedkar, there is an amendment moved by Mr. Kamath that in clause (1) of article 302, for the word " duties " the word " functions " be substituted.

The Honorable Dr. B. R. Ambedkar: The word " functions " is a large word and it includes both powers and duties. We have said powers and duties which include all the functions that we can have. It is unnecessary to have any kind of amendment like that.

Mr. President: The question is :

" That is clause (1) of article 302 for the word ' duties ' the word ' functions ' be substituted."

The amendment was negatived.

Mr. President: That is the only amendment that has been moved. I shall now put the amendment put by Dr. Ambedkar.

Shri T. T. Krishnamachari : The whole lot can be put together.

Mr. President: If the Members want that, I shall put them separately. Very well. I shall put them together.

The Honorable Dr. B. R. Ambedkar: Sir, I move:

" That the heading above article 243, and article 243, 244 and 245 be omitted."

That might be put, so that the others may be taken separately. It is an independent thing.

(The motion was adopted.)

The heading above article 243, and articles 243, 244 and 245 were deleted.

PART XA

The Honorable Dr. B. R. Ambedkar: Sir, I move:

" That after Part X, the following new Part be inserted, namely :—

" *PART XA*

Trade, Commerce And Intercourse Within The-Territory Of India.

Freedom of trade commerce and inter course throughout the territory of India

274-A. Subject to the other provisions of this Part, trade, commerce and intercourse

throughout the territory of India shall be free.

(Power of Parliament to impose restrictions on trade, commerce intercourse by law)

274-B. Parliament may, by law enacted by virtue of powers conferred by this Constitution, impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

(Restrictions of the legislative powers of the Union and of the States with regard to the trade and commerce)

(Restrictions on trade, commerce and intercourse among State)

274-C. (1) Notwithstanding anything contained in article 274-B of this Constitution neither Parliament nor the Legislature of a State shall have power to make any law giving or authorising the giving of preference to one State over another or making any discrimination or authorising the making of any discrimination between one State and another by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) of this article shall prevent Parliament from making any law giving any preference or making any discrimination as aforesaid if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

274-D. Notwithstanding anything contained in article 274 or article 274-C of this Constitution, the legislature of a State may, by law----

(a) impose on goods which have *been* imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest :

Provided that no Bill or amendment for the purpose of clause (b) of this article shall be introduced or moved in the legislature of the State nor shall any Ordinance be promulgated for the purpose by the Governor or Ruler of the State without the previous sanction of the President.

(Appointment of authority to carry out the provisions of articles 274A to 274D)

274-E. Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 274A, 274-B, 274-C and 274-D of this Constitution, and confer on the authority so appointed such powers and such duties as it thinks necessary.' "

Sir, all that I need do at this stage is to inform the House that originally the

articles dealing with freedom of trade and commerce were scattered in different parts of the Draft Constitution. One article found its place in the list of Fundamental Rights, namely, article 16, which said that trade and commerce, subject to any law made by Parliament, shall be free throughout the territory of India. The other articles, namely, 243, 244 and 245 were included in some other part of the Draft Constitution. It was found in the course of discussion that a large number of members of the House were not in a position to understand the implications of articles 243, 244 and 245, because these articles were dissociated from article 16. In order, therefore, to give the House a complete picture of all the provisions relating to freedom of trade and commerce the Drafting Committee felt that it was much better to assemble all these different articles scattered in the different parts of the Draft Constitution into one single part and to set them out *seriatim*, so that at one glance it would be possible to know what are the provisions with regard to the freedom of trade and commerce throughout India. I should also like to say that according to the provisions contained in this part it is not the intention to make trade and commerce absolutely free, that is to say, deprive both Parliament as well as the States of any power to depart from the fundamental provision that trade and commerce shall be free throughout India. The freedom of trade and commerce has been made subject to certain limitations which may be imposed by Parliament or which may be imposed by the Legislatures of various States, subject to the fact that the limitation contained in the power of Parliament to invade the freedom of trade and commerce is confined to cases arising from scarcity of goods in any part of the territory of India and in the case of the States it must be justified on the ground of public interest. The action of the States in invading the freedom of trade and commerce in the public interest is also made subject to a condition that any Bill affecting the freedom of trade and commerce shall have the previous sanction of the President; otherwise, the State would not be in a position to undertake such legislation. Article 274-E is merely an article which would enable Parliament to establish an authority such as the Inter-State Commission as it exists in the United States. Without specifically mentioning any such authority it is thought desirable to leave the matter in a fluid state so as to leave Parliament freedom to establish any kind of authority that it may think fit.

If any further points are raised in the course of the debate, I shall be glad to offer the necessary explanation.

ARTICLE 274-A

The Honorable Dr. B. R. Ambedkar: Mr. President, I do not think that I can

usefully add anything to what my friends Shri T. T. Krishnamachari and Shri Alladi Krishnaswami Ayyar have said.

[All 3 amendments were negated. Article 274-A was added to the Constitution.— Ed.]

ARTICLE 264

The Honorable Dr. B. R. Ambedkar: (Bombay : General) : Sir, I move:

" That for article 264, the following article be substituted :—(Exemption of property of the Union from State Taxation)

" 264. (1) The property of the Union shall be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) of this article shall, until Parliament by law otherwise provides, prevent any local authority within a State from imposing any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable so long as that tax continues to be levied in that State."

I will speak after the amendments have been moved, if there is any debate.

Pandit Laxmi Kant Maitra: ...According to the Act of 1941, if there is a notification to that effect by the Government local taxes in respect of them, could be collected. But the taxes would be in a modified form. There the criterion is services rendered.

The Honorable Dr. B. R. Ambedkar: You have taken more than five minutes.

Shri Chimanlal Chakubhai Shah : . .I would therefore request Dr. Ambedkar to consider these two points, namely ,(1) whether in article 266 it is not necessary...

The Honorable Dr. B. R. Ambedkar: We are for the moment considering 264 and 266. That may be dealt with when we come to article 266.

Mr. President: The view points have been placed before the House. Dr. Ambedkar will now reply to the debate.

The Honorable Dr. B. R. Ambedkar: Sir, I will first refer to the provision's contained in clause (2) of the proposed article 264. I think it would be agreed that the intention of this clause (2) is to maintain the *status quo*. Consequently under the provisions of clause (2) those municipalities which are levying any particular tax on the properties of the Union immediately before the

commencement of the Constitution or on such property as is liable or treated as liable for the levy of these taxes, will continue to levy those taxes. All that clause (2) does is that Parliament should have the authority to examine the nature of the taxes that are being imposed at present. There is nothing more in clause (2), except the saving clause, viz., " until Parliament by law otherwise provides ". Until Parliament otherwise provides the existing local authorities, whether they are municipalities or local boards, will continue to levy the taxes on the properties of the Center. Therefore, so far as the *status quo* is concerned, there can be no quarrel with the provisions contained in article 264.

The only question that can arise is whether the right given by clause (2) should be absolute or should be subject to the proviso contained therein, until Parliament otherwise provides. In another place where this matter was discussed I submitted certain arguments for the consideration of the House.

Pandit Hirday Nath Kunzni : (United Provinces : General) : Which is the other place that my Honorable Friend is referring to? Is there any other Chamber of the Assembly?

The Honorable Dr. B. R. Ambedkar: It is unmentionable and therefore I am saying " another place ". Because the arguments that I presented there have been reproduced in a garbled fashion I think they have not succeeded in impressing the House with their importance and therefore I should like to repeat my arguments because they are my own, and I should like to repeat them in the way I should like the House to understand them.

I said then that it was difficult to give a *carte blanche* to the local authority to levy taxes on the properties of the Union without any kind of limitation or condition and the arguments were two-fold. First of all, I said and I say right now here that it is impossible theoretically to conceive of any property of a person who is not represented or whose interests are not represented in any particular organisation,—to allow that organisation a right *ad infinitum* to levy any tax upon the property of such persons. It is a principle contrary to the principles of natural justice and I said that so far as the local authorities are concerned, whether they are municipalities or local or district boards, there is practically no representative of the Central Government in those bodies. I said the same thing elsewhere. Secondly, I said that the taxing authority of a local body is derived from a law made by the local legislature, the legislature of the State. It is quite impossible for the Center to know what particular source of taxation, which has been made over by the Constitution to the State legislature, will be transferred by such State legislature to the local authority. After all, the taxing power of the local authority will be derived from a law made by the State Legislature. It is quite impossible at present to know what particular tax a local body may be authorised by the State Legislature to tax the property of the

Central Government. Consequently, not knowing what is to be the nature of the tax, what is to be the extent of the tax, it is really quite impossible to expect the Central Government to surrender without knowing the nature of the tax, the nature of the extent of the tax, to submit itself to the authority of the local body.

That is the reason why in clause (2) it is proposed to make this reservation that parliament should have an opportunity to examine the taxing power of the local authority, the amount of tax that they propose to levy, before parliament will submit itself to allow its property to be taxed by the local authority. As I said, there is not the slightest intention on the part of the parliament or on the part of those who have proposed this article, that parliament when it exercises this authority which is given to it by clause (2) will exempt itself completely from the taxation levied by the local authority. The only reason why this proviso is introduced is to allow Parliament an opportunity to examine the taxation proposals before it is called upon to submit itself to that taxation. I do not think that there is any inequity so far as clause (2) is concerned. Secondly, clause (2) does not take away anything by way of the financial resources now possessed by the local authorities from what they are getting now.

There is, however, one point which I have discovered now, that is a sort of lacuna in clause (1) which I am prepared to rectify. Clause (2) deals with the cases of those municipalities or local authorities which have been levying that tax. We also think that it is desirable that this right should not be confined to those municipalities or local authorities which have been exercising that right, but Parliament may also extend that privilege of taxing the property of the Center to those municipalities and local boards which have not so far exercised that power or failed to do that. Therefore, I am prepared to introduce these words in clause (1) :

" After the words ' The property of the Union shall ' the words ' save in so far as Parliament may by law otherwise provide ', be added."

That is to say, it would permit Parliament to confer power or to recognise taxation by other municipalities and other local boards which are so far not recognised. I think that is a lacuna which I am prepared to make good so that there may be no discrimination between local authorities which have been taxing and those which have not been taxing. It would be open to Parliament, even after the passing of the Constitution, to make a law permitting those municipalities and local authorities which have not so far levied a tax to levy a tax. Beyond that I am not prepared to go.

Shri Syamanandan Sahaya : (Bihar : General) : Even under the existing Government of India Act, 1935, municipalities were not allowed to tax buildings belonging to the Government of India.

The Honorable Dr. B. R. Ambedkar: That is what I have said. I could have

elaborated the argument a great deal but I do not want to do it because I have accepted that the *status quo* should be maintained. Purely from the constitutional point of view, I would have tremendous objection to clause (2) and I would not allow it, but we are not having a clean slate; we are having so much written on it and therefore I do not want to wipe off what is written. That is the reason why I will have clause (2) and also modify clause (1) to permit Parliament to enable those municipalities which have not been taxing Central property to tax them.

Babu Ramnarayan Singh : Dr. Ambedkar said Parliament will consider the respective claims of the local bodies later on. I want to know what will be the immediate effect of the passing of this Constitution. For instance, in my province of Bihar certain district boards, especially the District Board of Hazaribagh, always gets a large amount of money from the Government colliery as road cess. May I know whether that payment will be stopped as soon as this Constitution is passed or will it continue to be paid till it is decided upon by the Parliament?

The Honorable Dr. B. R. Ambedkar: Sir, I cannot express any opinion upon individual taxes that are being levied, but the general proposition is quite clear that if any municipality or local board has been levying a tax that tax will continue to be levied against the property of the Center and against such other property as will be held liable to taxation. There will be no change in the position of those municipalities which are levying those taxes.

Shri B. K. Sidhva : At present under the Indian Railways Taxation Act, a notification has to be issued in the event of local bodies demanding payment of tax. May I know whether Dr. Ambedkar is prepared to consider that section to be amended? Of course it cannot be amended here but is there any assurance from the Railway Minister that it is going to be amended in Parliament?

The Honorable B. R. Ambedkar: Sir, I wish my Friend Mr. Sidhva drew a proper lesson from the Railway Taxation Act. Parliament voluntarily submitted itself by passing an Act to allow the properties of the Railways to be taxed by the local authorities. Any Parliament can voluntarily submit its properties to be taxed by local authorities and there is no reason to suspect that Parliament will not volunteer to allow its other properties also to be taxed in the same manner. If the Railway Property Taxation Act is not properly carried out or if there is any lacuna, it would be open to Parliament to amend it, and I suppose it would be also open to Mr. Sidhva to go to a court of law and have the money paid if it becomes payable and due under the Railway Property Taxation Act.

[Mr. Sidhva withdrew his amendment. Article 264, as modified by Dr. Ambedkar's amendment was adopted and added to the Constitution.]

ARTICLE 265

The Honorable Dr. B. R. Ambedkar: Sir, I move:

" That in article 265, for the words ' a Union railway ', wherever they occur, the words ' any railway ', be substituted."

This is mainly consequential upon the changes we have made in List I of Schedule VII.

[The amendment was adopted. Article 265, as amended, was added to the Constitution.]

NEW ARTICLE 265-A

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That after article 265, the following article be inserted :— (Exemption from taxation by States in respect of water or electricity in case of certain authorities).

' 265-A. (1) Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Explanation.—In this clause, the expression " law in force " has the same meaning as in article 307 of this Constitution '."

In the following paragraph of the article, I wish to introduce some new words with your permission and move it with those words.

" (2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1) of this article but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order."

[New Article 265-A was added to the Constitution.]

ARTICLE 266

The Honorable Dr. B. R. Ambedkar: Sir, I move:

" That for article 266 the following article be substituted :—

' 266. (1) The property and income of a State shall be exempt from Union Taxation.

(Exemption of the Government of States in respect of Union Taxation)

(2) Nothing in clause (1) of this article shall prevent the Union from imposing or authorising the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes thereof, or any income occurring or arising there from.

(3) Nothing in clause (2) of this article shall apply to any trade or business, or to any class of trade or business, which Parliament, may, by law declare as being incidental to the ordinary functions of government '."

SEVENTH SCHEDULE ARTICLE 250-(*CONTD.*)

The Honorable Dr. B. R. Ambedkar: Sir, I move:

" That after entry 88 in List I of the Seventh Schedule, the following entry be inserted:—

' 88.A. Taxes on the sale or purchase of newspapers and on advertisements published therein '."

I also move:

" That for entry 58 of List II of the Seventh Schedule, the following entries be substituted:—

' 58. Taxes on the sale or purchase of goods other than newspapers.

58-A. Taxes on advertisements other than advertisements published in newspapers. ' "

Sir, with your permission I shall move the other amendment—No. 374—to article 250 also as it is really part of this.

I move:

" That in clause (1) of article 250, after sub-clause (d), the following sub-clauses be added:—

" (e) taxes other than stamp duties on transactions in stock-exchanges and futures market;

(a) taxes on the sale or purchase of newspapers and on advertisements published therein.' "

Shri T. T. Krishnamachari : I would like to mention that the formal permission of the House will have to be obtained to reopen article 250 which it will be necessary to do in respect of amendment No. 374.

Shri R. K. Sidhva : I raise a point of order that an article which has been completed and passed by the House cannot be reopened.

Mr. President: That is just the point that Mr. Krishnamachari has raised.

Shri R. K. Sidhva: No, Sir. He has moved an amendment to reopen the subject I am raising a point or order that it cannot be reopened.

The Honorable Dr. B. R. Ambedkar: That the President will decide—whether you are right or he is right.

Mr. Naziruddin Ahmad : There is another matter to which I would like to

draw your attention. In regard to the amendment to entry 88-A it is the same amendment as that of Mr. Jhunjhunwala. It has now been stolen by the Drafting Committee and is being passed on as their own. Curiously enough. Dr. Ambedkar's amendment No. is 379 which is the section of the Indian Penal Code relating to theft. Can this sort of literary piracy be allowed?

Mr. President: You can take credit for having pointed it out.

The Honorable Dr. B. R. Ambedkar: He is quite content with that. He has not lodged a complaint of theft or robbery.

Mr. Naziruddin Ahmad : But theft is a cognizable offence. It is also non-compoundable. It does not depend on the complaint of any one, absence of objection will not excuse it.

Mr. President: We shall deal with the entries first.

The Honorable Dr. B. R. Ambedkar: Sir, when this matter came up last time before the House there was a lot of debate as to what was exactly intended, what the House could do and what I was prepared to accept. You were kind enough to say that the matter might be recomitted to the Drafting Committee. The Drafting Committee after consideration of the same has brought forth new proposals. The proposals are that newspapers and taxes on advertisements in newspapers should be put in List 1. That is a matter to which the Drafting Committee has now agreed. The second amendment—No. 379—is merely a consequential thing because since newspapers and taxes on the sale of newspapers and advertisements therein have been brought into List I, it is necessary to exclude the taxation on newspapers under the Sales Tax Act and advertisement therein from the jurisdiction of the State Legislature.

ENTRY 58

The Honorable Dr. B. R. Ambedkar: Sir, in view of what my Honorable Friend Mr. Sidhva said that I have been inconsistent in my attitude towards these entries, I should like to offer one or two observations by way of explanation. Sir, I said in the course of the debate that took place last time over this matter that the newspapers were very intimately connected with article 13 which deals with Fundamental Rights. Therefore in making any provision with regard to newspapers that is a matter which has to be borne in mind.

The second thing is that so far as any regulation of fundamental rights is concerned, under article 27 of the Constitution which we have already passed we have left all matters of legislation regarding fundamental rights to Parliament and we have not left any power with the States. It therefore appeared to me and also to the Drafting Committee that in view of these consideration, namely,

that newspapers were coming under fundamental rights, and all laws regarding fundamental rights were being left to Parliament, it was only a natural corollary that newspapers for purposes of taxation should also come under the authority of the Center.

A third consideration which prevailed with the Drafting Committee as well as with myself was that in view of the fact that newspapers were connected with fundamental rights, namely, the freedom of expression and thought, it was desirable that any imposition that was levied upon them should be uniform and not vary from province to province. Such uniformity can be obtained only if the matter was left to Parliament to make laws. There are the three considerations which prevailed with me and prevailed with the Drafting Committee in the view that they have taken.

The only other consideration of importance was that this item was not purely an item dealing with making laws. It also dealt with laying a tax in so far as newspapers were included in the term goods in entry 58 of List II. We therefore thought that in order not to deprive the provinces of such revenue as they might be able to make by imposing a levy upon newspapers under the Sales Tax Act, the proper thing to do was to include the sales tax on newspapers in article 250 which includes many other items and provides that if any taxation was levied upon them, the proceeds shall be distributed among the various provinces.

Therefore, the only question for consideration that arises is whether by making this transfer from List II to List I, we are injuring so to say the finances of the provinces. My answer is that we are not doing any injury to the provinces because if the House would agree to carry my amendment No. 374, the provinces will get such portion of any tax on the sale of newspapers as they may have raised and now receive, under the amendment No. 374. In making these proposals, we have taken into consideration as I said the general proposition that newspapers having been connected, with fundamental rights, ought to come under the jurisdiction of the Center, and that any financial gain which the provinces would have got should not be lost sight of. Both these considerations have prevailed with the Drafting Committee in making these changes.

I submit, notwithstanding the declarations of my Honorable Friend Mr. Sidhva which I can understand, because he is smarting under a great injury which he suffered in another place, I say that there can be no objection to the entries that we have proposed.

Shri R. K. Sidhva : Sir, I take exception to Dr. Ambedkar's remarks when he said that I am smarting under some injury. I shall pay him in his own coins unless you ask him to withdraw those remarks.

The Honorable Dr. B. R. Ambedkar: I am quite prepared to withdraw them.

Sir. But, I know it very well.

Mr. President: That settles the matter.

[The original amendment of Dr. Ambedkar, as shown above, was adopted and other amendments were rejected. Entries 58 and 58-A, as amended, were added to the State List of the Seventh Schedule.]

ARTICLE 250

Shri T. T. Krishnamachari : Dr. Ambedkar has already moved it. It is only a formal matter and it can be put to vote.

Mr. President: Does any one wish to say anything about amendment No. 374 moved by Dr. Ambedkar?

(No Member rose)

The Honorable Dr. B. R. Ambedkar: It is only a consequential thing, Sir.

Mr. President: There is no amendment to this. I shall put this to vote.

The question is:

" That *in* clause (1) of article 250, after sub-clause (d), the following sub-clauses be added:—

" (e) taxes other than stamp duties on transactions in stock-exchanges and futures market;

(f) taxes on the sale or purchase of newspapers and on advertisements published therein."

(The amendment was adopted.)

ARTICLE 202

Mr. President: Article 202.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That in clause (1) of article 202, after the words ' to issue ' the words ' to any person or authority including in appropriate cases any Government within those territories,' be inserted."

I said when moving an amendment to article 302 that a consequential amendment would be necessary in article 202. I am therefore moving this Article 202 as amended will now read as follows :—

" Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any Government within those territories directions or orders in the nature of writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, for the enforcement of any of the rights conferred by Part III of this Constitution for any other purposes." It is just consequential.

Pandit Thakur Das Bhargava: (East Punjab : General) : Why do you say in appropriate cases?

The Honorable Dr. B. R. Ambedkar: Because appropriate cases will be laid

down by law of Parliament.

[The amendment was adopted.]

ARTICLE 234-A

The Honorable Dr. B. R. Ambedkar: Sir, I move:

" That after article 234, the following new article be inserted :— (Control of the Union over States as respects protection of Railways).

' 234-A. (1) The executive power of the Union shall also extend to the giving of direction to a State to the measures to be taken for the protection as respects protection of railways, of the railways within the State.

(2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.' "

Sir, all police first of all are in the Provincial list. Consequential the protection of railway property also lies within the field of Provincial Government. It was felt that in particular cases the Center might desire that the property of the railway should be protected by taking special measures by the province and for that purpose the Center now seeks to be endowed with power to give directions in their behalf. It is possible that by reason of the special directions given by the Center some extra cost above the normal may be incurred by the provinces. In that event what that extra cost is, may either be determined by agreement or if there is no agreement, by an arbitrator chosen by the Chief Justice of India. The second clause is analogous to many of the clauses that we have passed in the Constitution for settling the disputes between the Center and the Provinces so far as extra cost is concerned.

Dr. P. S. Deshmukh : Mr. President, I do not feel convinced about the necessity of this provision which refers only to railway property....

Shri Brajeshwar Prasad: Mr. President, Sir, I rise to extend my hearty support to clause (1) of this article, but I am thoroughly opposed to clause (2). .. .Therefore I want that if there is any conflict between the Center and the provinces as far as the costs are concerned, the matter may be left entirely in the hands of the president.

The Honorable Dr. B. R. Ambedkar: Sir, this clause is very necessary. My Friend Mr. Deshmukh when he said, that there were adequate provisions in the existing article we have passed—1 am sorry to say—he is fundamentally

mistaken. Railway Police is a subject within the authority of the State. Police as an entry does not find a place in List 1. Consequently the Center has no authority to make a law with regard to any police matter at all, nor, not having the legal authority, has it any executive authority. Therefore so far as protection of the railway property is concerned, the matter is entirely within the executive authority of the State. That being so, there are only two methods of doing it. Either the Center should be endowed with police authority for the purpose of protecting their own property in which case an article such as the one which I have moved is unnecessary or we should have the provision which I have suggested viz., to give directions. Supposing the Center has a police to protect railways, that police may come in conflict with the police authority of the State. Therefore the double jurisdiction has been avoided by the scheme which has been suggested viz., that the Center should have the authority to give directions that more police may be posted on the railways, better precautions may be taken, so that there will not be any conflict, and should more expenditure be incurred the Center should be ready to bear it. I cannot see what difficulty there can be. Dr. Deshmukh's premise that this matter is already covered is hopelessly wrong.

Dr. P. S. Deshmukh : What is the reason, why we do not need any protection so far as the rest of the property of the Union is concerned? How do you distinguish between railway property and others?

The Honorable Dr. B. R. Ambedkar: Because we find the railway property needs more attention. The safety of passengers is there.

[The motion of Dr. Ambedkar was adopted. New Article 234-A was added to the Constitution.]

NEW ARTICLE 242-A

Mr. President: Dr. Ambedkar, you may move amendment No. 372-A, regarding the heading.

Shri T. T. Krishnamachari : If No. 373 is passed, then the deletion of heading is consequential.

The Honorable Dr. B. R. Ambedkar: Sir, I move amendment No. 373:

" That after article 242, the following new article be inserted :—(Adjudication of disputes relating to waters of inter state rivers of river valleys).

' 242-A. (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter rivers or river valleys.

(2) Notwithstanding anything contained in this Constitution, Parliament may, by law,

provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1) of this article.' "

Sir, originally this article provided for Presidential action. It was thought that these dispute's regarding water and so on may be very rare, and consequently they may be disposed of by some kind of special machinery that might be appointed. But in view of the fact that we are now creating various corporations and these corporations will be endowed with power of taking possession of property and other things, very many disputes may arise and consequently it would be necessary to appoint one permanent body to deal with these questions. Consequently it has been felt that the original draft or proposal was too hide-bound or too stereotyped to allow any elastic action that may be necessary to be taken for meeting with these problems. Consequently I am now proposing this new article which leaves it to Parliament to make laws for the settlement of these disputes.

Shri R. K. Sidhva : Article 242 is proposed to be deleted, and so how does this new article 242-A come up after article 242? .

The Honorable Dr. B. R. Ambedkar: This one only indicates the position.

[Motion was adopted. New article 242-A was added to the constitution.]

Mr. President: Amendment No. 372-A.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

"That the heading above article 239, and articles 239, 240, 241 and 242 be deleted."

These are covered by article 242-A and therefore are unnecessary.

Mr. President: Does anyone wish to say anything about this amendment?
There is no amendments. I then put it to the house.

(The motion was adopted.)

The heading above article 239, and articles 239,240,241, and 242 were deleted.

ARTICLES 248-A, 263 AND 263-A

The Honorable Dr. B. R. Ambedkar: Sir, I should like to move the three amendments 380, 381 and 382 introducing three new articles, and I begin with amendment No. 382 because the rest are consequential.

Mr. President: All right.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That after article 263, the following new article be inserted :—

' 263-A. All moneys received by or deposited with—(Custody of suiter's deposits and other moneys received by Public servants and

courts).

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of a State, as case may be, or

(b) any court within the territory of India to the credit of any cause, matter, account or persons shall be paid into the public account of India or of the State, as the case may be.' "

Sir, if you permit me, I shall move the other amendments also and then offer some general observations to enable Members to understand the changes that we propose to make.

Mr. President: Yes.

The Honorable Dr. B. R. Ambedkar: I move amendment No. 380 and amendment No. 381. I move:

" That for article 248-A, the following article be substituted :—(Consolidated Funds and Public Accounts of India and of the States)

' 248A. (1) Subject to the provisions of article 248B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to all revenues received by the Government of India and all loans raised by them by the issue of treasury bills, loans or ways and means advances and all moneys received in repayment of loans shall form one consolidated fund to be entitled " The Consolidated Fund of India " and all revenues received by the Government of a State, loans raised by the Government of a State by the issue of treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled " The Consolidated Fund of the State."

(2) All over public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India, or of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.' "

Amendment No. 381.

" That for article 263, the following article be substituted :—(Custody of Consolidated Funds, Contingency Funds and moneys credited to the public accounts and the payment of moneys into and withdrawal of moneys from such Funds and public accounts).

' 263. (1) The custody of the Consolidated Fund and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys there from, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters

aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys there from, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of a State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and until provisions in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State.' "

Briefly, the changes are two-fold. In the original article No. 248A as it stood, the scope of the Consolidated Fund was limited. The Consolidated Fund did not specifically refer to the proceeds of loans, treasury bills and ways and means advances. We now propose to make a specific mention of them so that they will form part of the Consolidated Fund.

The second thing is that in drawing the definition of the Consolidated Fund we lumped along with it certain other moneys which were received by the state, but which were not the proceeds of taxes or loans, etc., with the result that public money received by the state otherwise than as part of the revenues or loans also became subject to an Appropriation Act, namely, the provision contained in sub-clause (3) of article 248A. Obviously the withdrawal of money which should strictly not form part of the Consolidated Fund of the State cannot be made subject to any Appropriation Act. They will be left open to be drawn upon in such manner, for such purposes and at such times subject to such conditions as may be laid down by Parliament in that behalf specifically. It is, therefore, to enlarge the definition expressly of the Consolidated Fund and to separate the Consolidated Fund from other funds which go necessarily into the public account that these changes are made. There is no other purpose in these changes. The Finance Ministry drew attention to the fact that our provision in regard to the Appropriation Act was also made applicable to other moneys which generally went into the public account and that that was likely to create trouble. It is in order to remove these difficulties that these provisions are now introduced in the original article.

[Motion was adopted. New article 263-A was added to the Constitution.]

ABOLITION OF PRIVY COUNCIL JURISDICTION BILL

Mr. President: The first item on the Order Paper today is notice of a motion by Dr. Ambedkar to introduce a Bill to abolish the jurisdiction of His Majesty in

Council.

The Honorable Dr. B. R. Ambedkar: (Bombay: General) : Sir, I move for leave to introduce a Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions.

Mr. President: The question is :

" That leave be granted to introduce a Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions."

(The motion was adopted.)

The Honorable Dr. B. R. Ambedkar: Sir, I introduce the Bill.

**DRAFT CONSTITUTION
NEW PART XIV-A—(CONTD.)**

Mr. President: I think these are all the amendments. If I have left out any, the Member who has given notice of the amendments may point out otherwise they may be taken as withdrawn by leave of the Assembly.

I shall now put the amendments moved by Mr. Munshi. But, there is an amendment by Mr. Tyagi to number the paragraphs.

The Honorable Dr. B. R. Ambedkar: That is a matter we will look to later on.

Shri Mahavir Tyagi : It has been accepted. Sir.

Shri T. T. Krishnamachari : May I suggest. Sir, before adjourning the House, that you may put to vote articles 99 and 184 which this Chapter supersedes?

The Honorable Dr. B. R. Ambedkar: No; no. It is not in today's Order Paper.

Mr. President: This brings the proceedings of this evening to a close but before adjourning the House I desire just to say a few words of congratulation. I think we have adopted a Chapter for our Constitution which will have very far reaching consequences in building up the country as a whole. Never before in our history did we have one language recognised as the language of rule and administration in the country as a whole....

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